

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 25, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 422

Introduced by Senator Wright

February 16, 2011

An act to amend Section ~~121025~~ *121015* of the Health and Safety Code, relating to health reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Wright. Reporting of certain communicable diseases.

Existing law exempts a physician who has the results for a confirmed positive test for HIV from civil and criminal liability for disclosing that information to specified people, including the local health officer, and requires that no identifying information be disclosed, except as specified. Existing law authorizes the local health officer to notify the other specified people for appropriate care and followup.

This bill would include the designated staff of the local public health agency for HIV partner services in the people to whom the physician may disclose the information. The bill would authorize disclosure of identifying information with the written consent of the individual, as specified. The bill would also exempt from civil and criminal liability a local health officer and the designated local public health agency staff for HIV partner services who alert the other specified people about a positive HIV result.

~~Existing law prohibits the disclosure of public health records relating to HIV and AIDS, and the information contained in those records, with specified exceptions for public health purposes, including when the person who is the subject of the record is coinfecting with HIV/AIDS and tuberculosis or a sexually transmitted disease, as specified, or when the disclosure is pursuant to a written authorization. Existing law requires a disclosure of these records or information to include only the information necessary for the purpose of the disclosure, and to be made only upon agreement that the information will be kept confidential and will not be further disclosed without written authorization.~~

~~This bill would expand, for specified public health purposes, the authority of local public health agencies to disclose information contained in public health records relating to HIV and AIDS, to include when the person who is subject of the record is HIV infected and there is a high risk for specified coinfections.~~

~~The bill would also expand the disclosure authorization for the purpose of investigation, control, or surveillance of HIV, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 121015 of the Health and Safety Code is*
- 2 *amended to read:*
- 3 121015. (a) Notwithstanding Section 120980 or any other
- 4 provision of law, no physician and surgeon who has the results of
- 5 a confirmed positive test to detect HIV infection of a patient under
- 6 his or her care shall be held criminally or civilly liable for
- 7 disclosing to a person reasonably believed to be the spouse, or to
- 8 a person reasonably believed to be a sexual partner or a person
- 9 with whom the patient has shared the use of hypodermic needles,
- 10 or to the local health officer *or designated local public health*
- 11 *agency staff for HIV partner services*, that the patient has tested
- 12 positive on a test to detect HIV infection, except that no physician
- 13 and surgeon shall disclose any identifying information about the
- 14 individual believed to be infected, except as required in Section
- 15 121022 *or with the written consent of the individual pursuant to*
- 16 *subdivision (g) of Section 120980.*
- 17 (b) No physician and surgeon shall disclose the information
- 18 described in subdivision (a) unless he or she has first discussed

1 the test results with the patient and has offered the patient
2 appropriate educational and psychological counseling, that shall
3 include information on the risks of transmitting the human
4 immunodeficiency virus to other people and methods of avoiding
5 those risks, and has attempted to obtain the patient's voluntary
6 consent for notification of his or her contacts. The physician and
7 surgeon shall notify the patient of his or her intent to notify the
8 patient's contacts prior to any notification. When the information
9 is disclosed to a person reasonably believed to be a spouse, or to
10 a person reasonably believed to be a sexual partner, or a person
11 with whom the patient has shared the use of hypodermic needles,
12 the physician and surgeon shall refer that person for appropriate
13 care, counseling, and followup. This section shall not apply to
14 disclosures made other than for the purpose of diagnosis, care, and
15 treatment of persons notified pursuant to this section, or for the
16 purpose of interrupting the chain of transmission.

17 (c) This section is permissive on the part of the attending
18 physician, and all requirements and other authorization for the
19 disclosure of test results to detect HIV infection are limited to the
20 provisions contained in this chapter, Chapter 10 (commencing
21 with Section 121075) and Sections 1603.1 and 1603.3. No
22 physician has a duty to notify any person of the fact that a patient
23 is reasonably believed to be infected with HIV, except as required
24 by Section 121022.

25 (d) The local health officer *or the designated local public health*
26 *agency staff for HIV partner services* may, *without incurring civil*
27 *or criminal liability*, alert any persons reasonably believed to be
28 a spouse, sexual partner, or partner of shared needles of an
29 individual who has tested positive on an HIV test about their
30 exposure, without disclosing any identifying information about
31 the individual believed to be infected or the physician making the
32 report, and shall refer any person to whom a disclosure is made
33 pursuant to this subdivision for appropriate care and followup.
34 Upon completion of the ~~local health officer's~~ efforts to contact,
35 *alert, and refer any person pursuant to this subdivision by a local*
36 *health officer or the designated local public health agency staff*
37 *for HIV partner services*, all records regarding that person
38 maintained by the local health officer pursuant to this subdivision,
39 including, but not limited to, any individual identifying
40 information, shall be expunged by the local health officer.

1 (e) The local health officer shall keep confidential the identity
2 and the seropositivity status of the individual tested and the
3 identities of the persons contacted, as long as records of contacts
4 are maintained.

5 (f) Except as provided in Section 1603.1, 1603.3, or 121022,
6 no person shall be compelled in any state, county, city, or local
7 civil, criminal, administrative, legislative, or other proceedings to
8 identify or provide identifying characteristics that would identify
9 any individual reported or person contacted pursuant to this section.

10 SECTION 1. ~~Section 121025 of the Health and Safety Code~~
11 ~~is amended to read:~~

12 ~~121025.—(a) Public health records relating to human~~
13 ~~immunodeficiency virus (HIV) or acquired immunodeficiency~~
14 ~~syndrome (AIDS), containing personally identifying information,~~
15 ~~that were developed or acquired by a state or local public health~~
16 ~~agency, or an agent of that agency, shall be confidential and shall~~
17 ~~not be disclosed, except as otherwise provided by law for public~~
18 ~~health purposes or pursuant to a written authorization by the person~~
19 ~~who is the subject of the record or by his or her guardian or~~
20 ~~conservator.~~

21 ~~(b) In accordance with subdivision (f) of Section 121022, a state~~
22 ~~or local public health agency, or an agent of that agency, may~~
23 ~~disclose personally identifying information in public health records,~~
24 ~~as described in subdivision (a), to other local, state, or federal~~
25 ~~public health agencies or to corroborating medical researchers,~~
26 ~~when the confidential information is necessary to carry out the~~
27 ~~duties of the agency or researcher in the investigation, control, or~~
28 ~~surveillance of disease, as determined by the state or local public~~
29 ~~health agency.~~

30 ~~(c) Except as provided in paragraphs (1) to (4), inclusive, any~~
31 ~~disclosure authorized by subdivision (a) or (b) shall include only~~
32 ~~the information necessary for the purpose of that disclosure and~~
33 ~~shall be made only upon agreement that the information will be~~
34 ~~kept confidential and will not be further disclosed without written~~
35 ~~authorization, as described in subdivision (a).~~

36 ~~(1) Notwithstanding any other provision of law, the following~~
37 ~~disclosures shall be authorized for the purpose of enhancing~~
38 ~~completeness of HIV/AIDS, tuberculosis, and sexually transmitted~~
39 ~~disease coinfection reporting to the federal Centers for Disease~~
40 ~~Control and Prevention (CDC):~~

1 ~~(A) The local public health agency HIV surveillance staff may~~
2 ~~further disclose the information to the health care provider who~~
3 ~~provides HIV care to the HIV-positive person who is the subject~~
4 ~~of the record for the purpose of assisting in compliance with~~
5 ~~subdivision (a) of Section 121022.~~

6 ~~(B) Local public health agency tuberculosis control staff may~~
7 ~~further disclose the information to state public health agency~~
8 ~~tuberculosis control staff, who may further disclose the information,~~
9 ~~without disclosing patient identifying information, to the CDC, to~~
10 ~~the extent the information is requested by the CDC and permitted~~
11 ~~by subdivision (b), for purposes of the investigation, control, or~~
12 ~~surveillance of HIV and tuberculosis coinfections or single HIV~~
13 ~~infections when there is a high risk for HIV and tuberculosis~~
14 ~~coinfection.~~

15 ~~(C) Local public health agency sexually transmitted disease~~
16 ~~control staff may further disclose the information to state public~~
17 ~~health agency sexually transmitted disease control staff, who may~~
18 ~~further disclose the information, without disclosing patient~~
19 ~~identifying information, to the CDC, to the extent it is requested~~
20 ~~by the CDC, and permitted by subdivision (b), for the purposes of~~
21 ~~the investigation, control, or surveillance of HIV and syphilis,~~
22 ~~gonorrhea, or chlamydia coinfection or single HIV infections when~~
23 ~~there is a high risk for HIV and syphilis, gonorrhea, or chlamydia~~
24 ~~coinfection.~~

25 ~~(2) Notwithstanding any other provision of law, the following~~
26 ~~disclosures shall be authorized for the purpose of facilitating~~
27 ~~appropriate HIV/AIDS medical care and treatment:~~

28 ~~(A) State public health agency HIV surveillance staff, AIDS~~
29 ~~Drug Assistance Program staff, and care services staff may further~~
30 ~~disclose the information to local public health agency staff, who~~
31 ~~may further disclose the information to the HIV-positive person~~
32 ~~who is the subject of the record, or the health care provider who~~
33 ~~provides his or her HIV care, for the purpose of proactively offering~~
34 ~~and coordinating care and treatment services to him or her.~~

35 ~~(B) AIDS Drug Assistance Program staff and care services staff~~
36 ~~in the State Department of Public Health may further disclose the~~
37 ~~information directly to the HIV-positive person who is the subject~~
38 ~~of the record or the health care provider who provides his or her~~
39 ~~HIV care, for the purpose of proactively offering and coordinating~~
40 ~~care and treatment services to him or her.~~

~~(3) Notwithstanding any other provision of law, for the purpose of facilitating appropriate medical care and treatment of persons coinfectd with HIV, tuberculosis, and syphilis, gonorrhea, or chlamydia, local public health agency sexually transmitted disease control and tuberculosis control staff may further disclose the information to state or local public health agency sexually transmitted disease control and tuberculosis control staff, the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV, tuberculosis, and sexually transmitted disease care.~~

~~(4) Notwithstanding any other law, local public health agency staff may further disclose the information to the HIV-positive person who is the subject of the record or the health care provider who provides his or her HIV care, for the purpose of the investigation, control, or surveillance of HIV.~~

~~(5) For the purposes of paragraphs (2) to (4), inclusive, "staff" does not include nongovernmental entities.~~

~~(d) No confidential public health record, as defined in subdivision (c) of Section 121035, shall be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.~~

~~(e) (1) Any person who negligently discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, as described in subdivision (a), or as otherwise authorized by law, shall be subject to a civil penalty in an amount not to exceed five thousand dollars (\$5,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose record was disclosed.~~

~~(2) Any person who willfully or maliciously discloses the content of any confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, or as otherwise authorized by law, shall be subject to a civil penalty in an amount not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), plus court costs, as determined by the court, which penalty and costs shall be paid to the person whose confidential public health record was disclosed.~~

~~(3) Any person who willfully, maliciously, or negligently discloses the content of any confidential public health record, as~~

1 defined in subdivision (c) of Section 121035, to any third party;
2 except pursuant to a written authorization, or as otherwise
3 authorized by law, that results in economic, bodily, or
4 psychological harm to the person whose confidential public health
5 record was disclosed, is guilty of a misdemeanor, punishable by
6 imprisonment in the county jail for a period not to exceed one year,
7 or a fine of not to exceed twenty-five thousand dollars (\$25,000),
8 or both, plus court costs, as determined by the court, which penalty
9 and costs shall be paid to the person whose confidential public
10 health record was disclosed.

11 (4) Any person who commits any act described in paragraph
12 (1), (2), or (3), shall be liable to the person whose confidential
13 public health record was disclosed for all actual damages for
14 economic, bodily, or psychological harm that is a proximate result
15 of the act.

16 (5) Each violation of this section is a separate and actionable
17 offense.

18 (6) Nothing in this section limits or expands the right of an
19 injured person whose confidential public health record was
20 disclosed to recover damages under any other applicable law.

21 (f) In the event that a confidential public health record, as
22 defined in subdivision (c) of Section 121035, is disclosed, the
23 information shall not be used to determine employability, or
24 insurability of any person.